

(1987) 10 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 53-M of 1987

Kum Kum Puri

APPELLANT

Vs

Ashwani Kumar Tangri

RESPONDENT

Date of Decision: Oct. 26, 1987

Acts Referred:

- Hindu Marriage Act, 1955 - Section 9

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: M.L. Sarin, Miss Jai Shree Thakur and Miss Ritu Bahri, for the Appellant; M.S. Rakkar, for the Respondent

Final Decision: Dismissed

Judgement

J.V. Gupta, J.

This is wife's appeal against whom decree u/s 9 of the Hindu Marriage Act for restitution of conjugal rights has been passed.

2. The marriage between the parties was solemnized on 30.9.1984. They parted company on 23.11.1984. The wife filed petition u/s 125, Code of Criminal Procedure for maintenance on 12.9.1985 in which reply on behalf of the husband was filed on 16.12.1985. The present petition u/s 9 of the Hindu Marriage Act was filed by the husband on 18.12.1985 alleging that as long as the wife stayed with him she remained under depression and also had fits. He got her medically examined and got her admitted in Mission Hospital at Ambala for treatment. The cause of depression could not come to his knowledge. But the wife herself disclosed later that she had this problem before her marriage and suffered fits and that she remained admitted in Mission Hospital at Ambala for treatment. It was on 23.11.1984 when the wife's brother came to visit her and took her to Ambala on the pretext that her parents wanted to see her and that she will come back soon. Later on she did not turn up. Efforts were made by the father of the husband along with

Gurcharan Dass to bring her back from Ambala when the wife's father told them that she will be sent soon. On 16.12.1985 the husband went to Ambala to bring her back, but she told him that she was not feeling well and was under medical treatment and therefore, refused to accompany him. Instead of coming back to the matrimonial home, she filed a petition u/s 125, Cr. P. C. against him at Ambala. According to the husband, the wife has deserted him without any reasonable and probable cause. She is living away from him against his wishes. Her attitude has deprived him of his marital and conjugal rights.

3. The petition was contested inter alia on the ground that the wife was forced by the husband and his family members to sweep their house, scrub their dishes and to draw water from the hand-pump. She was often beaten and humiliated by the mother and sister of the husband. They made her life miserable. They even threatened to eliminate her. The husband and his family members used to taunt her that she had brought a very scanty dowry although she was the daughter of a Gazetted Officer. The articles brought by her in, dowry were entrusted to the husband, his sister and they had misappropriated the same by giving the same in the marriage of the husband's sister Parveen, without the consent of the wife. Husband's father demanded Rs. 1,50,000/- allegedly spent by him on his son's appointment as a Ranger. When she refused, he used foul, filthy and indecent words and threatened her. She denied that she remained under depression and got fits during her stay in matrimonial home. According to her, she is not suffering from any sort of disease. She was brought to her parents home by her father on getting information on phone that her life was made hell by her husband and his family members, as she was not allowed to take meals nor was allowed to dress properly and use her dowry articles. The petition u/s 9 has been filed as a counterblast to the petition filed by her earlier u/s 125 Cr. P. C. The husband has neglected and refused to maintain her as he wanted to have divorce from her and the present petition has been filed as a step-in-aid in that direction.

4. On the pleadings of the parties, the trial Court framed the following issues:

1. Whether the respondent has withdrawn from the society of the Petitioner without sufficient cause and the Petitioner is entitled to a decree for restitution of conjugal rights ?

2. Whether the petition is liable to be dismissed, as alleged in the written statement ?

3. Relief.

5. The learned Additional Senior Sub Judge came to the conclusion under issue No. 1 that the wife has withdrawn from the society of the husband without sufficient cause and, therefore, he was entitled to a decree for restitution of conjugal rights. Consequently, a decree was passed.

6. Learned Counsel for the Appellant (wife) submitted that no reasons whatsoever has been given by the husband that why the wife left the matrimonial home. According to the learned Counsel in the absence of any explanation on the part of the husband, the burden did not shift to the wife. He argued that ordinarily a Hindu wife will not leave the matrimonial home unless there is some cause which the husband has failed to prove in the present case. In support of his contention he placed reliance on Gurdeep Kaur v. Surinder Singh 1971 Cur. L.J. 977 and Jagdish Kumar v. Munesh Kumari 1986 M.L.J. 333. He next contended that the petition has been filed with an ulterior motive as a counter blast of the petition filed by the wife earlier u/s 125 Code of Criminal Procedure. Therefore, the same was liable to be dismissed on this ground. In support of this argument reliance was placed on Munish Kumar v. Sharan Lata 1985 M.L.J. 182 and Raj Kumari v. Rajinder Lal Mehta 1985 (2) H. L. R. 249. He also submitted that no sincere effort was made on the part of the husband to bring the wife back, and that the wife has alleged that she left the house because she was given beating and this according to the learned Counsel was a sufficient ground for leaving the matrimonial home. He referred to P. R. Gowri Shankara v. K Gayathri Devi 1985 (1) H. L. R. 656 and Mohinder Kaur v. Surinder Kumar 1985 (1) H.L.R. 584. He also contended that since the husband and his parents demanded dowry and taunted her on this account which made her life miserable and ultimately forced her to leave the matrimonial home. In this respect the statement of the wife as such should have been accepted. In support of this he referred to Purnamsi Pradhan v. Suresh Pradhan 1985 (2) H. L. R. 249.

7. It was lastly contended that since there are no chances of living together by the parties, the husband should not be allowed to use this decree for restitution of conjugal rights as a step-in-aid for divorce. He should seek a step of filing a regular petition, if any, which the wife could contest on merits. On the other hand, the learned Counsel for the husband-Respondent submitted that there is no allegation in the written statement that she was ever called "mad" by her husband or parents. According to the learned Counsel, the question of demand of any dowry did not arise. The husband and wife had been living happily and also had gone to Srinagar for honey-moon. They stayed together at Garhshankar upto 15/10/1984. There, brother of the wife also attended a reception party and there was no complaint on the part of the wife of any maltreatment or demand of dowry at that time. According to the learned Counsel, the reason for leaving the matrimonial home is that the wife was suffering from mental depression and that she admitted that even prior to the marriage she had been getting treatment for the said purpose. He particularly referred to the letter Exhibit A-5 dated 3.11.1984 written by the wife to her father, wherein she never made a complaint of any maltreatment or demand of dowry. Even in the letters Exhibit A-3 dated 24/11/1986 addressed by the wife to her husband and Exhibit A-4 dated 24/11/1986 addressed by the wife to her father-in-law, no such complaint was made. All efforts were made on the part of the husband to bring her back to the matrimonial home but she refused on one pretext

or the other. Ultimately, she filed a petition u/s 125, Code of Criminal Procedure which showed her intention not to join the matrimonial home and this necessitated the filing of the present petition u/s 9 of the Hindu Marriage Act.

8. I have heard the learned Counsel for the parties and also gone through the evidence on the record.

9. According to the learned Additional Senior Sub Judge, it is correct that usually a married women does not like to leave the matrimonial home of her husband, unless she is forced to by the circumstances, but if this principal is admitted as a blanket defence for the wife, in all the cases, then no petition of the husband u/s 9 of the Hindu Marriage Act, can succeed. This approach is wholly wrong and mis-conceived. The question is not of blanket defence It has to be seen in each case as to whether there is any cogent, and valid reason given by the husband as to why the wife did not join the matrimonial home. In the absence of any explanation, initial burden still remains on him. Once that burden is discharged, then it will be for the wife to show u/s 9 as to whether there has been reasonable excuse for withdrawal from the society of her husband. According to the learned Counsel for the Respondent husband, since the wife was suffering from mental depression, she did not want matrimonial home. This explanation does not inspire any confidence. As a matter of fact, it was never the case set up by the husband in his petition u/s 9 of the Hindu Marriage Act. In any case, there is no cogent evidence on the record to prove that the wife was suffering from any mental disease much less from mental depression as such. In her statement in Court she explained that her sister-in-law was operated upon for caesarian, and she was serious. It being a serious case, she was effected by a bit of anxiety due to precarious condition of her sister-in-law. That was in the year 1984 before marriage. This single instance could not be taken to mean that the wife was suffering from any mental depression as such The approach of the trial Court in this behalf is wholly misconceived.

10. The trial Court has mis-interpreted the contents of the letter Exhibit A-5 dated 3.11.1984 written by the wife to her father. The said letter was produced in evidence by the husband. He did not give any explanation that how this letter fell into his hands. According to the trial Court, in this letter the wife has written to her father that he had chosen the right person for her but she could not provide happiness to him as was expected to her. According to the trial Court it means that the fault, if any, was of the parents of the wife and not of the parents of her husband The said letter was read as a whole in this Court. As a matter of fact the wife wanted to take the whole burden on herself so that it may not hurt the feelings of anybody. She has categorically mentioned therein that she is being punished for her sins which means that she was being maltreated at her husband's house Otherwise there was no occasion for her to write like this in the said letter. In this case, as it appears, the wife is cultured lady and the said letter was written in such a manner that it conveyed her feelings without making any accusations against any particular person

as such. However, from the tenor of the letter, it is quite evident, that she was quite frustrated from the behaviour of her husband's parents in the matrimonial home.

11. The trial Court also relied upon letters Exhibit A-3 and A-4 dated 24.11.1984 addressed by the wife to her husband and her father-in-law. According to the trial Court, since the wife did not make any complaint in the said letter of any maltreatment or of demand of any dowry, the story put-up by her in the present case could not be accepted. Of course, she had not made any complaint in the said letters but the said letter was written just after one day when she left the matrimonial home. As observed earlier, she did not want to blame anybody for her misfortune as she took it that she was being punished for his own sins. According to the trial Court, it was because of her mental depression whereas according to the case set up by the wife it was because of the maltreatment meted to her at her father-in-law's house.

12. It could not be disputed that petition u/s 125 Code of Criminal Procedure was filed by the wife on 12.9.1985. Reply therein was filed on 16.12.1985 and the present petition was filed u/s 9 of the Hindu Marriage Act on 18.12.1985. It is, therefore, *prima-facie* evident that this petition has been filed as a counter blast to the petition for maintenance. There does not seem to be a genuine efforts on the part of the husband to have the wife back in the matrimonial home. Rather, he wants to obtain this decree in order to get divorce in due course. Thus the petition u/s 9 could not be said to be a *bona fide*.

13. As a result of the above discussion, this appeal succeeds, the decree of the trial Court is set aside and the petition for restitution of conjugal rights is dismissed with no order as to costs.